



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/170623

PRELIMINARY RECITALS

Pursuant to a petition filed December 04, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on January 14, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner was overissued FoodShare benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

|

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The agency sent Petitioner a Notice of FoodShare Overissuance dated November 20, 2015. It informed Petitioner that he had been overissued FoodShare benefits for the period from May 6, 2015 through November 30, 2015 in the amount of \$633.00. This is claim number [REDACTED]

3. The basis for this FoodShare overissuance claim was agency error. Petitioner and his spouse submitted a review on May 6, 2015. They correctly reported household composition and income but there was a problem with respect to utility expenses. The agency allowed full utility expenses and Petitioner and his spouse reported rent of \$502.00 per month. In fact, Petitioner's base rent was \$377.00 with an extra \$15.00 for air conditioning and \$20.00 for parking.
4. Petitioner's household size is 2. Income was \$1178.78.
5. There is a prior recoupment on Petitioner's FoodShare case which reduces the FoodShare benefit by \$36.00 per month.

DISCUSSION

The Federal Regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). *7 Code of Federal Regulations (CFR) § 273.18(b)*, see also *FoodShare Wisconsin Handbook, Appendix §7.3.2*. Generally speaking, whose "fault" caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, *7 CFR § 273.18(b)*; see also *FoodShare Wisconsin Handbook, App. 7.3.1.9*. Overpayments due to "client error" may be recovered for up to six years after discovery. *FoodShare Wisconsin Handbook, §7.3.2.1*.

Additionally, Federal Regulations provide, in relevant part, as follows:

- (a) Establishing claims against households.** All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household. The State Agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . .
- 7 CFR § 273.18; also see FoodShare Wisconsin Handbook (FSH), § 7.3.1.1.*

Finally, in an administrative hearing concerning the propriety of an overpayment of benefits the agency has the burden of proof to establish that the action taken by the agency was correct. A petitioner must then rebut the agency's case and establish facts sufficient to overcome the evidence of correct action by the agency in determining the overpayment action was required.

To receive FoodShare benefits a household must have income below gross and net income limits though the gross income test does not apply where a household has an elderly blind or disabled member. *7 Code of Federal Regulations (CFR), §273.9(b)*; *FoodShare Wisconsin Handbook (FSH), § 1.1.4*. The agency must budget all income of the FS household, including all earned and unearned income. *7 CFR § 273.9(b)*; *FoodShare Wisconsin Handbook (FSH), § 4.3.1*. Petitioner's household was under the gross income limit but the net income still had to be determined. Once a household passes the gross income test the following deductions are applied (*FSH, at § 4.6*):

- (1) a standard deduction - which currently is \$155 per month for a household of 2 calculations persons, *7 CFR § 273.9(d)(1)*;
- (2) an earned income deduction - which equals 20% of the household's total earned income, *7 CFR § 273.9(d)(2)*;
- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, *7 CFR § 273.9(d)(3)*;
- (4) dependent care deduction for child care expenses, *7 CFR § 273.9(d)(4)*; and
- (5) shelter and utility expenses deduction – the utility expense requires that a household have an actual utility obligation and is a standard deduction based on that obligation (e.g., \$30 where it is phone only); the deduction is equal to the excess expense above 50% of net income remaining after

other deductions. 7 CFR § 273.9(d)(5). There is a cap of \$478.00 on the shelter cost deduction unless a household has an elderly [60 or older], blind or disabled member. *FSH*, §§ 4.6.7.3 and 8.1.3.

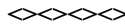
It is also noted that surcharges for parking and air conditioning are not allowed shelter expenses. *FSH*, §4.6.7.2.

In reviewing the overpayment calculations I can find no error.

Finally, I do note for Petitioner's benefit the following *FSH* provision as to repayment of an overissuance

- (b) Establishing claims against households.** All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household. The State Agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . .

7 CFR § 273.18; also see *FoodShare Wisconsin Handbook (FSH)*, § 7.3.1.1.



7.3.2.6 Allotment Reduction

An overissuance due to any type of error will be recovered from a FS group participating in the program by reducing their allotment.

The type of error determines the amount that will be recovered each month.

1. Client/Nonclient error. CARES will reduce the allotment by the greater of 10% of the group's monthly allotment or \$10 each month. The \$10 minimum benefit level for 1 or 2 person groups applies before CARES reduces the allotment.
2. IPV. CARES will reduce the allotment by the greater of 20% of the group's monthly entitlement or \$20 each month. The entitlement is the amount of benefits the group would have received if not for the disqualification of a FS group member. The \$10 minimum benefit level for 1 or 2 person groups applies before CARES reduces the allotment.

CARES will not allow you to reduce the minimum deduction to less than \$10 for Client/Nonclient and less than \$20 for an IPV.

FSH, §7.3.2.6.

CONCLUSIONS OF LAW

That the evidence offered by the agency is sufficient to demonstrate that Petitioner was overpaid FoodShare benefits as alleged.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and

why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 26th day of January, 2016

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 26, 2016.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability